

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
Rafiqul Islam, on behalf of himself and others  
similarly situated in the proposed FLSA  
Collective Action,

Plaintiffs,

**CASE NO.: 1:22-cv-10368-ER**

v.

Ben's Kosher Delicatessen & Restaurant Inc.,  
West 38 Kosher Deli Inc., Ronald M. Dragoon,  
And Robert B. David,

**ANSWER**

Defendants.

-----X  
Defendants Ben's Kosher Delicatessen & Restaurant Inc., West 38 Kosher Deli Inc., Ronald M. Dragoon, and Robert B. David (hereinafter referred to as the "Defendants"), by their attorney, Law Offices of Mitchell S. Segal, P.C., as and for their answer to Plaintiff's Complaint (the "Complaint"), deny each and every allegation contained in the Complaint except as admitted or otherwise qualified herein, and allege on knowledge with respect to themselves and their own acts and on information and belief as to all other matters that they:

**INTRODUCTION**

1. The Defendants deny the allegations contained in Paragraph "1" of the Complaint.
2. The Defendants deny the allegations contained in Paragraph "2" of the Complaint.

**JURISDICTION AND VENUE**

3. Paragraph "3" of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required the Defendants aver that Plaintiff seeks the jurisdiction of this

Court.

4. Paragraph “4” of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required the Defendants aver that Plaintiff seeks the jurisdiction of this Court.
5. Paragraph “5” of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required the Defendants aver that Plaintiff seeks the jurisdiction of this Court.
6. Paragraph “6” of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required the Defendants aver that Plaintiff seeks the jurisdiction of this Court.

#### **THE PARTIES**

7. The Defendants admit the allegations contained in Paragraph “7” of the Complaint.
8. The Defendants deny the allegations contained in Paragraph “8” of the Complaint.
9. The Defendants deny the allegations contained in Paragraph “9” of the Complaint.
10. The Defendants deny the allegations contained in Paragraph “10” of the Complaint.
11. The Defendants deny the allegations contained in Paragraph “11” of the Complaint.
12. The Defendants deny the allegations contained in Paragraph “12” of the Complaint.
13. The Defendants deny the allegations contained in Paragraph “13” of the Complaint.
14. The Defendants deny the allegations contained in Paragraph “14” of the Complaint.
15. The Defendants deny the allegations contained in Paragraph “15” of the Complaint.
16. The Defendants deny the allegations contained in Paragraph “16” of the Complaint.
17. The Defendants deny the allegations contained in Paragraph “17” of the Complaint.
18. The Defendants deny the allegations contained in Paragraph “18” of the Complaint.

19. The Defendants deny the allegations contained in Paragraph “19” of the Complaint.
20. The Defendants deny the allegations contained in Paragraph “20” of the Complaint.
21. The Defendants deny the allegations contained in Paragraph “21” of the Complaint.
22. The Defendants deny the allegations contained in Paragraph “22” of the Complaint.
23. The Defendants admit the allegations contained in Paragraph “23” of the Complaint.
24. Paragraph “24” of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required the Defendants deny the allegations contained in Paragraph “24” of the Complaint.
25. The Defendants deny the allegations contained in Paragraph “25” of the Complaint.
26. The Defendants deny the allegations contained in Paragraph “26” of the Complaint.
27. The Defendants deny the allegations contained in Paragraph “27” of the Complaint.
28. The Defendants deny the allegations contained in Paragraph “28” of the Complaint.
29. The Defendants deny the allegations contained in Paragraph “29” of the Complaint.
30. The Defendants deny the allegations contained in Paragraph “30” of the Complaint.
31. The Defendants deny the allegations contained in Paragraph “31” of the Complaint.
32. The Defendants deny the allegations contained in Paragraph “32” of the Complaint.
33. The Defendants deny the allegations contained in Paragraph “33” of the Complaint.
34. The Defendants deny the allegations contained in Paragraph “34” of the Complaint.
35. The Defendants deny the allegations contained in Paragraph “35” of the Complaint.
36. The Defendants deny the allegations contained in Paragraph “36” of the Complaint.
37. The Defendants deny the allegations contained in Paragraph “37” of the Complaint.
38. The Defendants deny the allegations contained in Paragraph “38” of the Complaint.
39. The Defendants deny the allegations contained in Paragraph “39” of the Complaint.

40. The Defendants deny the allegations contained in Paragraph “40” of the Complaint.
41. The Defendants deny the allegations contained in Paragraph “41” of the Complaint.
42. Defendants have no knowledge or information sufficient to form a belief as to the truth or accuracy concerning the allegations contained in Paragraph “42” of the Complaint, and therefore deny these allegations as related to the Plaintiff’s residence and deny the additional allegations in the Complaint.
43. The Defendants deny the allegations contained in Paragraph “43” of the Complaint.
44. The Defendants admit the allegations contained in Paragraph “44” of the Complaint.
45. The Defendants admit the allegations contained in Paragraph “45” of the Complaint.
46. The Defendants deny the allegations contained in Paragraph “46” of the Complaint.
47. The Defendants deny the allegations contained in Paragraph “47” of the Complaint.
48. The Defendants deny the allegations contained in Paragraph “48” of the Complaint.
49. The Defendants deny the allegations contained in Paragraph “49” of the Complaint.
50. The Defendants deny the allegations contained in Paragraph “50” of the Complaint.
51. The Defendants deny the allegations contained in Paragraph “51” of the Complaint.
52. The Defendants deny the allegations contained in Paragraph “52” of the Complaint.
53. The Defendants deny the allegations contained in Paragraph “53” of the Complaint.
54. The Defendants deny the allegations contained in Paragraph “54” of the Complaint.
55. The Defendants deny the allegations contained in Paragraph “55” of the Complaint.
56. The Defendants deny the allegations contained in Paragraph “56” of the Complaint.
57. The Defendants deny the allegations contained in Paragraph “57” of the Complaint.
58. The Defendants deny the allegations contained in Paragraph “58” of the Complaint.
59. The Defendants deny the allegations contained in Paragraph “59” of the Complaint.
60. The Defendants deny the allegations contained in Paragraph “60” of the Complaint.

- 61. The Defendants deny the allegations contained in Paragraph “61” of the Complaint.
- 62. The Defendants deny the allegations contained in Paragraph “62” of the Complaint.
- 63. The Defendants deny the allegations contained in Paragraph “63” of the Complaint.
- 64. The Defendants deny the allegations contained in Paragraph “64” of the Complaint.
- 65. The Defendants deny the allegations contained in Paragraph “65” of the Complaint.
- 66. The Defendants deny the allegations contained in Paragraph “66” of the Complaint.
- 67. The Defendants deny the allegations contained in Paragraph “67” of the Complaint.
- 68. The Defendants deny the allegations contained in Paragraph “68” of the Complaint.
- 69. The Defendants deny the allegations contained in Paragraph “69” of the Complaint.
- 70. The Defendants deny the allegations contained in Paragraph “70” of the Complaint.
- 71. Paragraph “71” of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required the Defendants deny the allegations contained in Paragraph “71” of the Complaint.
- 72. The Defendants deny the allegations contained in Paragraph “72” of the Complaint.
- 73. The Defendants deny the allegations contained in Paragraph “73” of the Complaint.
- 74. The Defendants deny the allegations contained in Paragraph “74” of the Complaint.

**FIRST ALLEGED CLAIM OF ACTION**

- 75. The Defendants repeat and re-allege each and every answer to Paragraphs "1" through "74" as if fully set forth herein.
- 76. The Defendants deny the allegations contained in Paragraph “76” of the Complaint.
- 77. The Defendants deny the allegations contained in Paragraph “77” of the Complaint.

78. The Defendants deny the allegations contained in Paragraph “78” of the Complaint.

79. The Defendants deny the allegations contained in Paragraph “79” of the Complaint.

80. The Defendants deny the allegations contained in Paragraph “80” of the Complaint.

### **SECOND ALLEGED CLAIM OF ACTION**

81. The Defendants repeat and re-allege each and every answer to Paragraphs "1" through "80" as if fully set forth herein.

82. The Defendants deny the allegations contained in Paragraph “82” of the Complaint.

83. Paragraph “83” of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required the Defendants deny the allegations contained in Paragraph “83” of the Complaint.

84. The Defendants deny the allegations contained in Paragraph “84” of the Complaint.

85. The Defendants deny the allegations contained in Paragraph “85” of the Complaint.

86. The Defendants deny the allegations contained in Paragraph “86” of the Complaint.

### **THIRD ALLEGED CLAIM OF ACTION**

87. The Defendants repeat and re-allege each and every answer to Paragraphs "1" through "86" as if fully set forth herein.

88. Paragraph “88” of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required the Defendants deny the allegations contained in Paragraph “88” of the Complaint.

89. The Defendants deny the allegations contained in Paragraph “89” of the Complaint.

90. The Defendants deny the allegations contained in Paragraph “90” of the Complaint.

**FOURTH ALLEGED CLAIM OF ACTION**

91. The Defendants repeat and re-allege each and every answer to Paragraphs "1" through "90" as if fully set forth herein.

92. The Defendants deny the allegations contained in Paragraph “92” of the Complaint.

93. The Defendants deny the allegations contained in Paragraph “93” of the Complaint.

**FIFTH ALLEGED CLAIM OF ACTION**

94. The Defendants repeat and re-allege each and every answer to Paragraphs "1" through "93" as if fully set forth herein.

95. Paragraph “95” of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required the Defendants deny the allegations contained in Paragraph “95” of the Complaint.

96. The Defendants deny the allegations contained in Paragraph “96” of the Complaint.

97. The Defendants deny the allegations contained in Paragraph “97” of the Complaint.

98. Paragraph “98” of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required the Defendants deny the allegations contained in Paragraph “98” of the Complaint.

**PRAYER FOR RELIEF**

99. Defendants deny all statements and allegations contained therein, including any claim for relief set forth in Plaintiff's "WHEREFORE" clause in the Complaint.

**ADDITIONAL AVERMENTS**

100. Defendants deny all claims and allegations in the Complaint not unequivocally admitted herein.

**AFFIRMATIVE DEFENSES**

101. Without assuming a burden as to any of the following Affirmative Defenses where the law does not impose such a burden, Defendants assert the following Affirmative Defenses.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

102. The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

103. Plaintiff has received payment of all sums which may have been due under the Fair Labor Standard Act ("FLSA") and the New York Labor Law ("NYLL") and their respective regulations.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

104. Plaintiff is guilty of laches which bar certain of their claims.



**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

105. Plaintiffs are guilty of unclean hands which bar certain of their claims.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

106. Without conceding the burden of proof on such issue, at all times, Defendants acted lawfully and in good faith and in a non-reckless manner and, although they deny the allegations of unlawful conduct as set forth in the Complaint, they had reasonable grounds for believing that the acts or omissions alleged in the Complaint were not violative of the FLSA and the NYLL and their respective regulations.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

107. Defendants acted in good faith in conformity with and in reliance on written administrative regulations, orders, rulings, approvals and/or interpretations of the United States and New York State Department of Labor.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

108. Plaintiff's claims are barred, in whole or in part, by the *de minimis* doctrine.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

109. The Plaintiff's claims are barred to the extent that Plaintiff has failed to mitigate their damages or otherwise avoid harm.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

110. Plaintiff's claims are barred or should be reduced, in whole or in part, by exclusions, exceptions, credits, recoupment or offsets permissible under the FLSA and NYLL.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

111. Assuming, *arguendo*, that Plaintiff is entitled to any compensation for overtime, any time spent in any preliminary or postliminary activities by Plaintiff must be excluded from compensable hours.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

112. The Complaint is barred, in whole or in part, pursuant, *inter alia*, to the Portal-to- Portal Act and the FLSA.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

113. Neither the Complaint nor any of its causes of action states a claim upon which an award of attorneys' fees may be assessed against Defendants.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

114. Defendants reserve the right to present evidence, if such evidence exists, demonstrating that Plaintiff engaged in misconduct of such severity that the Plaintiff would have been terminated if Defendants had known of the misconduct at the time it took place, thereby barring any claim for damages and/or other relief on behalf of the Plaintiff after that date.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

115. To the extent that Plaintiff's claims are barred in whole or in part by the applicable statute of limitations, Defendants assert that defense.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE**

116. Defendants are not an Employer covered by the FLSA and/or the NYLL.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE**

117. Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver and/or estoppel.

**AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE**

118. Plaintiff cannot establish a willful violation under either the FLSA and/or NYLL.

**AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE**

119. Plaintiffs have named us as an improper Defendants as we are not an "Employer".

**AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE**

120. The Defendants are not a "covered enterprise" under the FLSA and as such the Plaintiff has no claims under the FLSA.

**AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE**

121. In addition to the foregoing defenses, Defendants retain the right to amend his Answer to

raise additional affirmative and other defenses as those defenses becomes known during this litigation.

**JURY DEMAND**

122. Defendants demand a trial by jury.

WHEREFORE, Defendants respectfully request a judgment,

1. Dismissing the Complaint in its entirety, with prejudice;
2. Denying each and every demand, claim and prayer for relief contained in Plaintiffs' Complaint;
3. Awarding Defendants reasonable attorney fees and costs incurred in defending against this meritless action, and
4. For such other and further relief as to this Court deems just and proper.

Dated: Manhasset, New York  
May 9, 2023

LAW OFFICES OF MITCHELL S. SEGAL, P.C.  
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